

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-6-G - ORDER NO. 2002-709

OCTOBER 2, 2002

IN RE: Annual Review of the Purchased Gas Adjustments (PGA) and Gas Purchasing Policies of South Carolina Pipeline Corporation.) ORDER DENYING) PETITION FOR) REHEARING AND/OR) RECONSIDERATION
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V. 10-10
100-11

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and/or Reconsideration of Order No. 2002-555A filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). South Carolina Pipeline Corporation (SCPC, Pipeline, or the Company) filed a Reply to said Petition. Because of the reasoning stated below, we deny the Consumer Advocate's Petition.

The Consumer Advocate noted that in Order No. 2002-555A, the Commission approved the continuation of SCPC's Industrial Sales Program Rider (ISPR) without modification, and denied the Consumer Advocate's Motion to require the Company to modify the ISPR to assign gas to its interruptible customers with the highest cost with which the Company can still make the gas sale. The Consumer Advocate alleges the Commission erred in holding that there was not enough evidence in the record to properly consider the Motion. Further, the Consumer Advocate alleges that the failure to grant his Motion results in gas costs and rates for firm customers which are unjust, unreasonable, and discriminatory.

Under the ISPR program, the Consumer Advocate points out, SCPC sells gas to its direct industrial interruptible customers at a price which is equal to the price that the customer could obtain an alternate fuel, such as No. 6 fuel oil. Each month, the customer reports the price of the alternate fuel to SCPC, and SCPC decides whether it can purchase natural gas at a price to meet the price of the alternate fuel. The sales price is based on the price of the customer's alternate fuel.

The Consumer Advocate alleges that Company witness Fant admitted that all the goals of the program could still be attained even if the Company were required to modify the ISPR to assign gas to its interruptible customers with the highest cost with which the Company can still make the gas sale. (And that the testimony of the Commission Staff supported the proposition.) The Consumer Advocate notes that under the current operation of the ISPR, the Company is not required to do so, and can assign any gas to the ISPR customer, as long as that gas cost is equal to or below the price of the customer's alternate fuel. According to the Consumer Advocate, assigning the lowest price increases SCPC's profit margin, because the allowed profit margin from ISPR customers is much greater than the margin allowed from firm customers.

Further, the Consumer Advocate states that the Commission's failure to grant the Consumer Advocate's Motion results in gas costs and rates for firm customers which are unjust, unreasonable, and discriminatory. According to him, assigning most of the lowest price gas to ISPR customers results in higher priced gas being assigned to the WACOG, which means higher gas prices for residential and small business customers. The testimony of Staff witness Barnette shows that the average effective rate for firm

customers for the period under review was \$7.44 per dekatherm, compared with an average cost of \$3.59 per dekatherm for ISPR customers. The Consumer Advocate states that there is no justification for this difference.

In summary, the Consumer Advocate notes that on the record in this case, the Company has admitted, and the Staff has agreed, that the stated goals of the ISPR would still be met if the Commission required the Company to modify the ISPR to assign gas to its interruptible customers with the highest cost with which the Company can still make the gas sale. The Consumer Advocate finally asserts that the Commission cannot simply ignore this admission.

South Carolina Pipeline Corporation replied to the Consumer Advocate's Petition. First, SCPC states that no notice was provided of the substantial and material change sought by the Consumer Advocate. SCPC notes that at no time prior to the Consumer Advocate's surprise Motion at the close of the hearing was SCPC aware of or notified that the Consumer Advocate intended to challenge the actual operation of the ISPR by seeking a modification to the program. SCPC did not seek any alteration or amendment to the operation of the program in the proceeding. The Company simply recommended that the program be continued without change. This Commission noted that the Company was not given "any Notice that such a broad sweeping motion would be presented at the time of the hearing." Order No. 2002-555A at 4. The Petition to Intervene filed by the Consumer Advocate is devoid of any language suggesting that he intended to propose specific changes to the ISPR. Further, SCPC notes that the Consumer Advocate did not prefile any testimony or pleadings prior to the hearing raising any

issues related to the ISPR. In summary, SCPC states that there is nothing to indicate that a request seeking a wholesale revision of how gas costs are assigned in the ISPR would be raised by any party or considered by the Commission.

Pipeline notes that the Motion in question was made at the conclusion of the hearing, after all of the testimony and evidence had been entered. SCPC alleges that if the Commission makes a favorable ruling on the Consumer Advocate's surprise Motion, prejudice would result to SCPC and violate its fundamental due process rights that prior notice be given when a valuable right is to be determined and that a meaningful opportunity to be heard be provided regarding the right at issue. Further, SCPC notes that it is also fundamentally unfair that all customers who would be affected by a modification of the ISPR program were not given notice that a far reaching, material modification to the program would be an issue.

The Company notes that the ISPR program is operating with the approval of the Commission, and has been for almost twenty years. SCPC has sought no change in the program. Thus, SCPC states that the program and its policies are presumptively correct, and that the Consumer Advocate bears the burden in attempting to establish that this longstanding program approved by the Commission requires modification. SCPC notes that the Consumer Advocate offered no fact witnesses, no expert witnesses, and no documentation for its proposal, yet now asks the Commission to make a decision on the Motion without any reliable or probative evidence, a decision that would be unconstitutional, arbitrary and capricious and clearly erroneous based upon the

substantial evidence of record, all of which are direct violations of S.C. Code Ann. Section 1-23-380.

SCPC also alleges that the Consumer Advocate attempts to recharacterize the testimony of two witnesses into supporting evidence, however, an actual reading of the transcript refutes this recharacterization. The Consumer Advocate stated that SCPC witness Paul Fant admitted that certain goals could still be obtained if the Company modified the ISPR. Upon further examination, though, according to the Company, Fant actually stated that if the Consumer Advocate was suggesting a different ISPR methodology, it was “a different issue,” and that he could not provide a judgment on whether it should be changed. Tr., at 88. In addition, the Company alleges that Staff witness Sires supports its proposal as well. However, an examination of Sires’ testimony reveals a statement in which he notes that any plan would have to take into consideration the effects on the sale-for resale customers of the Company, as well as effects on the Company itself. Tr. at 163-164.

Finally, Pipeline points out that any change in the ISPR program would require an examination of a host of issues, none of which were brought before the Commission in the hearing. In summary, SCPC states that the Consumer Advocate has failed to advance any independent evidence supporting his position, and the cross-examination testimony, in fact, supports leaving the ISPR unchanged.

We have examined this matter and have concluded that the Consumer Advocate’s Petition must be denied and dismissed, for the reasons cited in Pipeline’s Reply to the Consumer Advocate’s Petition. First, no notice was provided of the substantial and

material change sought by the Consumer Advocate. The Consumer Advocate's proposal was a Motion made at the end of the hearing, after all of the evidence had been received. There is nothing in any of the documents filed in this case before the hearing that would have indicated that a request seeking a wholesale revision of how gas costs are assigned to the ISPR would be raised by any party or considered by the Commission. We think that this is unfair, and would be in violation of the Company's fundamental due process rights. It would also be unfair to all other customers who would be affected by a modification to the program to not receive notice that a far reaching, material modification to the program would be at issue.

Next, there is no evidence in the record to make an informed decision on the Consumer Advocate's proposal. Although the Consumer Advocate attempted to recharacterize the testimony of Company witness Fant and Staff witness Sires to support his position, a careful reading of the two sections of testimony reveals that neither witness was necessarily in agreement with the wholesale change proposed by the Consumer Advocate. Further, the Consumer Advocate failed to advance any independent evidence supporting his position by way of testimony or documents. Accordingly, since we are in agreement with South Carolina Pipeline Corporation's position on this matter, the Consumer Advocate's Petition is denied and dismissed.

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This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director

(SEAL)